U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33947609

Date: DEC. 03, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a producer and promoter of musical events, seeks classification as an individual of extraordinary ability in the arts. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner meets the classification's initial evidentiary requirements. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner

to submit comparable material if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

In her initial filing, the Petitioner claimed to meet six of the ten evidentiary criteria: receipt of lesser nationally or internationally known awards, participating as a judge of the work of others, making original contributions of major significance in her field, authorship of scholarly articles, display of her work in artistic exhibitions, and performing in a leading or critical role for organizations with distinguished reputations. 8 C.F.R. § 204.5(h)(3)(i) and (iv)-(viii). The Director concluded that the evidence provided only satisfied the judging criterion and denied the petition accordingly.

On appeal, the Petitioner provides a personal statement and documentation regarding the criteria for lesser nationally or internationally known awards, majorly significant original contributions, and display of her work at artistic exhibitions. 8 C.F.R. § 204.5(h)(3)(i), (v), and (vii), respectively. Since the appeal does not challenge the Director's findings regarding 8 C.F.R. § 204.5(h)(3)(vi), authorship of scholarly articles, or 8 C.F.R. § 204.5(h)(3)(viii), performing in a leading or critical role, we consider these issues to be waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). We will consider the Petitioner's remaining claims below.

A. Receipt of Lesser Nationally or Internationally Recognized Awards or Prizes for Excellence in the Field of Endeavor. 8 C.F.R. § 204.5(h)(3)(i).

On appeal, the Petitioner states that she has received two nationally or internationally recognized awards: a certificate of recognition from the mayor of [redacted], Texas, and a [redacted] award. Upon review, we conclude that she has not established eligibility for this criterion.

To assess whether an award is nationally or internationally recognized as reflecting excellence in a person's field, we consider factors including the criteria used to grant the award, the number of awardees, any limitations on who may compete, and other evidence of the award's significance in the field of endeavor. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual.

Here, we first note that the certificate from the mayor of [redacted] does not appear to be an award for excellence in the Petitioner's field of concert production and promotion. The provided certificate states that the Petitioner has "added to the diverse array of music that makes [redacted] unique" and

thanks her "for her work in enhancing the diversity of [redacted] through Latin American music initiatives." The record therefore indicates that the award is granted for contributions to the community in [redacted], rather than for excellence in the field of concert production.

Secondly, the record does not contain documentation showing to what extent, if any, a certificate of appreciation from the mayor of [redacted] is recognized outside of [redacted]. The Petitioner contends on appeal that "while a mayor's award recognition is typically regional," in her case, "the award represents a recognition of a person who makes a significant contribution to an entire community," and that "the Hispanic culture represents the second largest in the United States." However, the plain language of the regulation requires the award in question to be nationally recognized, and the award certificate only mentions the Petitioner's contributions within the city of [redacted].

Similarly, while the Petitioner points out that the mayor of [redacted] has granted similar recognition to internationally famous recipients such as [redacted], there is no evidence in the record showing that [redacted] mayoral certificates of appreciation have a national or international level of fame. An award's recognition level is not measured by the preexisting recognition level of its awardees, but by whether it is nationally or internationally acknowledged as reflecting excellence in a person's field of endeavor. The Petitioner has provided no documentation showing that a certificate of appreciation from the mayor of [redacted] is acknowledged beyond the awarding entity.

Finally, petitioners must establish eligibility for the requested classification at the time their benefit request is filed. 8 C.F.R. § 103.2(b)(1). In this instance, the underlying visa petition was filed in December 2023. The certificate awarding the [redacted] to the Petitioner states that it was granted in March 2024. As such, it cannot establish the Petitioner's eligibility under this criterion.

The Petitioner has not provided evidence showing her receipt of lesser nationally or internationally recognized prizes or awards for excellence in her field. 8 C.F.R. § 204.5(h)(3)(i).

B. Display of the Petitioner's Work in the Field at Artistic Exhibitions or Showcases. 8 C.F.R. § 204.5(h)(3)(vii).

On appeal, the Petitioner resubmits promotional posters and venue licensing agreements regarding various concerts she produced and contends that each of these events was a display of her work in an artistic showcase. However, the record does not indicate that any of the concerts in question constituted an exhibition or showcase of the Petitioner's work.

The Merriam-Webster Dictionary defines a showcase as an occasion, setting, or medium for exhibiting something, and an exhibition as a public showing (as of works of art, objects of manufacture, or athletic skill) [1]. The regulation at 8 C.F.R. § 204.5(h)(3)(vii) specifically requires any qualifying exhibition or showcase to be artistic in nature – that is, a public showing of art. It also requires the work on display to be the person's own work product in their field. *Id.*, *see generally* 6 *USCIS Policy* Manual, *supra*, at F.2(B)(1). Here, while the Petitioner was involved in organizing concerts which qualify as artistic showcases, her work product was not the art that was on public display. There is no indication in the record that anything the Petitioner created as a work product, such as emails or contracts, was

[1] Merriam-Webster, Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/.

seen, heard, or otherwise publicly exhibited at any of the concerts she organized: the work product being displayed was that of the performers, production designers, and other artistic staff. She therefore has not established eligibility under 8 C.F.R. § 204.5(h)(3)(vii).

III. CONCLUSION

The extraordinary ability classification requires petitioners to meet at least three of the initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The Petitioner here only met one criterion in her underlying petition, and therefore cannot meet three criteria regardless of whether she qualifies under the major contributions criterion at 8 C.F.R. § 204.5(h)(3)(v). We therefore need not reach this issue and will reserve it. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof). The petition will remain denied.

ORDER: The appeal is dismissed.